

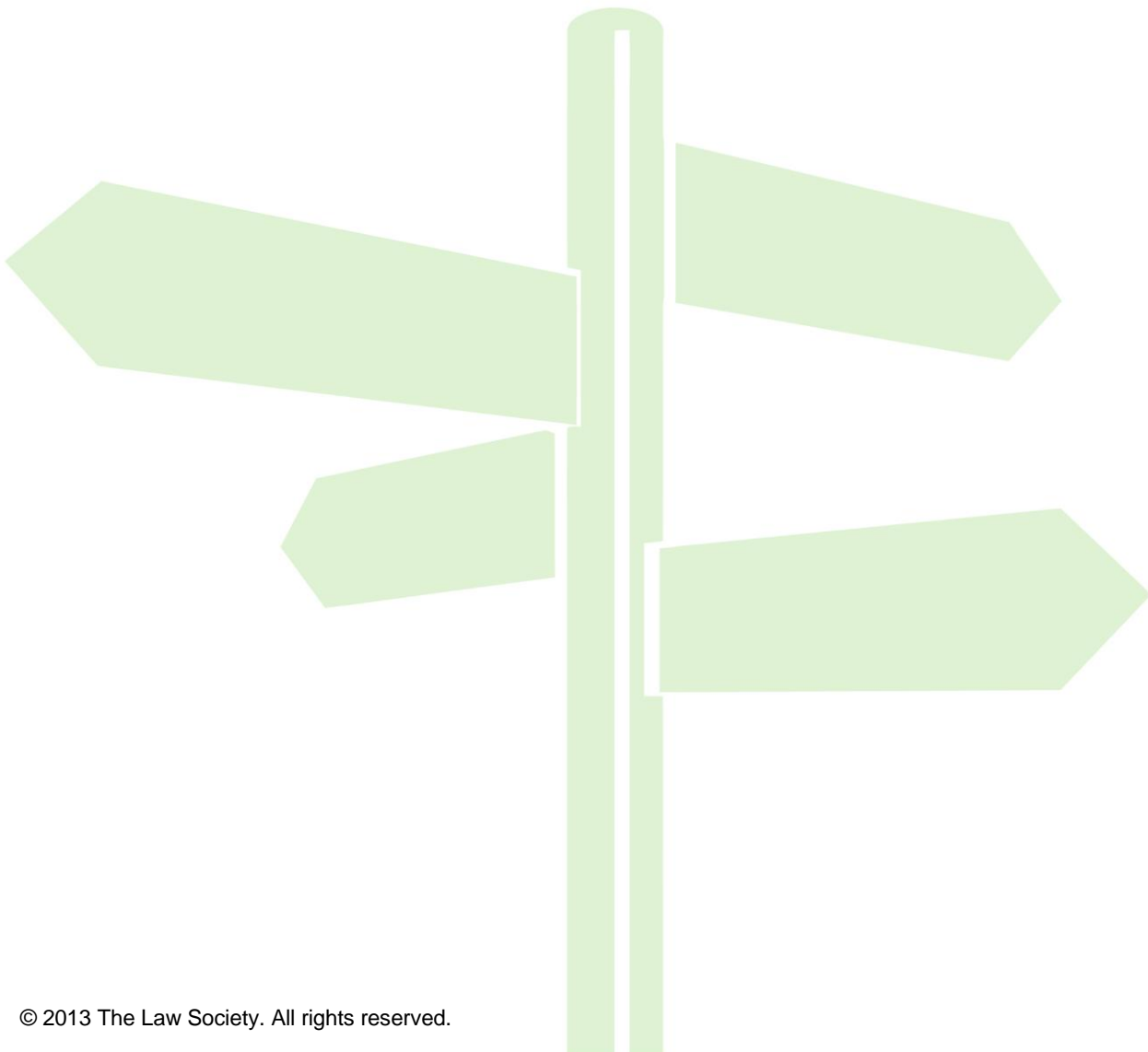


The Law Society

CMA Legal Services Market Study – Interim Report

Response of the Junior Lawyers Division of the Law Society

August 2016



Competition and Markets Authority

Legal Services Market Study – Interim Report

Junior Lawyers Division response

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The division, which has a committee with an independent voice, was established in 2008 to support:

- Legal Practice Course students
- Legal Practice Course graduates
- Trainee solicitors
- Solicitor up to five years qualified

The JLD, is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group.

The JLD provides members with an opportunity to:

- Network and connect with other junior lawyers
- Discuss issues of concern
- Benefit from training, advice and career guidance
- Ensure their views are heard
- Contribute to JLD campaigns, lobbying activities and consultation responses

For further information about the JLD visit the JLD website – www.lawsociety.org.uk/juniorlawyers

QUESTIONS ON IMPROVING PRICE AND SERVICE TRANSPARENCY

1. What are the barriers to providers sharing price and service information with consumers and do these vary by legal service?

It is very difficult to give consumers price and service information in most matters (by way of generalised publishing) as many legal services are bespoke to a client's needs. Legal services are, in many cases, not an 'off the shelf' purchase. Consumers tend to come to legal providers with a set of circumstances which they would like assistance with and not necessarily knowing what the solution will involve, rather than with a specific request for a particular service or document to be drafted. As such, we consider that there is a risk that publishing prices for services which may or may not be relevant to a client based on particular circumstances will cause more confusion as to pricing structures, rather than less.

However there are exceptions to this in those areas of law where the process or work required is generally the same for each client, such as simple wills, probate and conveyancing, it may be much easier to publish information. Even in these

instances there may need to be caveats to any published rates to account for unexpected complexities. A risk arises in that publishing costs forces a fixed fee culture, which in turn could impact overall on the quality of service provided, consumer experience and possibly be perceived to mislead consumers. It is our view that the CMA should balance any proposals against the risk of a "race to the bottom".

The JLD supports the idea in principle of greater transparency in costs information, but only where this would help consumers make an informed choice, rather than confusing them.

2. Is there a minimum level of information that providers should either (i) publish or (ii) provide to consumers either in advance of or on engagement? Should this be mandatory?

Estimated costs and disbursements (at the time of initiating the matter), fee earner and supervisor details, including hourly rates (if applicable), estimated time frame, governing body, details of the regulator and complaints procedure both internal and external should all be provided to consumers on engagement. This is presently mandatory and should continue to be.

Further, consumers should be provided with information which makes clear that if certain circumstances change, it will lead to increased costs.

3. Are there examples of good practice in price and service transparency that could be shared more widely?

Legal services differ in complexity and process dependent upon the client's needs and the type of work it is sometimes difficult to provide 'off the shelf' prices and specific service information.

Good practice is demonstrated when information regarding costs (forecast and actual) is sent out regularly to clients. Moreover, including a list of assumptions and limitations to the scope of work to be undertaken is vital. Clients need to understand what is included in the price and what will cost extra, otherwise they cannot compare prices appropriately.

4. How and when should legal service providers communicate:

- **Fees and rates to clients; and**
- **Anticipated or actual cost overturns (ie where the fee will exceed an estimate or quote)?**

Fees and rates to clients should be provided at the outset and regularly thereafter unless there is a change in the fees or rates. E.g. a file handler is promoted or the matter has becoming more complex, particularly where a fee earner with a higher charging rate will need to get involved.

In terms of fee updates, where a matter is being charged by the hour, the appropriate regularity of this can change depending on the matter and the projected timescale. For example, agreeing bi-monthly updates is not appropriate for a matter expected to only last six weeks, but might be reasonable for a

transaction running over the course of a year. As such, we consider that setting out a specific level of regularity would not work.

Anticipated or actual cost overruns should be communicated as soon as possible, but sometimes the urgency of the work means that this cannot be done straight away.

5. Are there any measures of quality that can readily be collected by regulators or government (including HM Courts and Tribunal Service in relation to civil actions and probate) on observing trends in quality of legal services?

Many firms are Lexcel accredited which is the Law Society's legal practice quality mark for excellence in legal practice management and excellence in client care. There are additionally various practice area specific accreditations from the Law Society which can be held by a firm and/or an individual practitioner to demonstrate quality in legal practice and service.

QUESTIONS ON ADDRESSING BARRIERS TO COMPARISON AND SEARCH

1. What are the barriers to comparison and search?

Firstly, that the proficiency in conducting a piece of legal work and the quality of service provided does not lie in the outcome per se. Consumers may be unfairly linking negative outcomes with poor legal work, when in many instances the outcome of the legal work is simply the resolution of the legal issues and should not be judged from an emotive position. This is particularly paramount in contentious matters – just because you did not "win", it does not necessarily mean the reason was that your lawyer conducted poor quality work, nor does it mean that they weren't as good as the lawyer on the other side.

Secondly, comparison on price is difficult, because it is rare that a consumer would get the exact same level of service between providers, with the only difference being price. If there is a cheaper competitor in the market who is merely supplying a 'bare bones' service to the client for cut-rate prices, this must be made clear in any search. A more expensive firm may provide a fuller service, or enable a more detailed and complete piece of legal work to be done, it does not follow that by driving down prices via a direct comparison tool it will lead to a better quality of service for clients who will opt for a cheaper option.

Thirdly, consumers often choose their legal advisors based on relationships, rather than an objective set of criteria which can be measured against a number of providers. Lawyers hold a position of trust, and so we believe consumers are likely to continue choose their provider based on personal recommendations and relationships.

Overall, the JLD considers that, in most cases (i.e. anything in which the level of legal input required and the outcome is based on circumstances outside a legal service provider's direct control) the use of a DCT is wholly inappropriate. Whilst it might be possible to compare the level of service against criteria which is unaffected by an individual matter, such as the level of communication from the provider, whether pricing was set out clearly at the beginning of the matter etc.,

the JLD cannot see how some sort of comparison tool for specific activities could be anything other than misleading.

2. Are those barriers consistent across different legal services (by area of law, activity and the extent to which a service is commoditised)?

The barriers are likely to be different across legal services. It may be easier to provide fixed cost information for more simple services but a more complex offering would likely persist for more sophisticated clients and this raises inherent difficulties in comparison.

It may prove less difficult to address the issue of search by legal area. Although, again, complexity of legal searches affects the benefit which a search or comparison may have. A search on basic terms will fail to differentiate the nuances in what is available, and therefore will not necessarily benefit consumers. The searches themselves would by their very nature necessitate a level of complexity that may be of limited use to lay clients.

An activity which tends not to deviate too much on a set of circumstances, such as residential conveyancing or basic wills, is slightly less challenging to search and compare.

Complicated matters necessarily need to be compared (if at all) in isolation. For example, many businesses invite providers to pitch for a specific piece of work. This gives the business the opportunity not to just compare the cost of the work, but also to decide their provider based on other factors and to fully understand what level of service or scope of work that provider is including in their fee quote. We believe that for some matters, this continues to be the most appropriate way to choose a legal service provider.

3. What additional information could be made available by regulators and bodies?

We understand that certain information as to professional negligence claims is produced by the legal ombudsman at present and the JLD supports the publishing of this kind of information.

Some independent guidance to consumers as to how to choose their law firm, things to look for, how to understand the way law firms charge/why fixed price legal work is not always an option would be helpful to both consumers and legal services providers.

4. What measures would allow consumers to be better able to compare the non-price attributes of legal services providers (such as quality or consumer protections)?

Better advertising of the existing industry rankings/peer reviewed directories would help clients make informed decisions.

We consider that good service could be measured by:

- The level of bespoke service offered
- frequency of communication or responsiveness

- face-to-face meetings, or telephone calls/update letters/emails sent
- whether the same person or team dealt with the client throughout the entire matter

A simple 'satisfaction' survey would likely fall foul of the aforementioned 'success bias', where a legal service is judged on outcome rather than competency. The level of service should be measured against more specific things, such as those listed above.

5. How can intermediaries and those making recommendations better support consumers in selecting a legal service provider?

By setting out the risks and benefits of using a regulated or non-regulated legal service provider, including protections in place should things go wrong.

Intermediaries could assist in managing expectations before a legal service provider gets involved, as to the level of legal input which may be required.

6. Is there any additional information held by government or regulators that if published would assist the development of the comparison sector or assist consumers directly conducting comparisons.

The number and nature of complaints. However, such information should be published in context. For example, a provider with a large residential property practice may get more complaints than one with no residential property practitioners by number, as this area of law traditionally has a large number of complaints. How to read and make the best use of such information should be made clear to consumers. This information should also be communicated as a proportion against the number of matters dealt with in the same area of law for a relevant period.

QUESTIONS ON IMPROVING CONSUMER INFORMATION

1. How and what information should be provided by a central information hub?

We consider that a central information hub would be useful as an online platform. However, we would like to draw to the CMA's attention the fact that users of legal services are the most vulnerable in society, and so accessibility to any such hub is vital. Therefore, this information should be also be made available in other forms, for example by the citizens advice bureau being able to download online search results onto hard copy, or a telephone line for consumers.

The hub could include:

- Service providers by areas of practice - providing consumers with a list of the solicitors within a firm and their area of specialisation. This way the consumer knows (a) whether the firm has a solicitor who practices in that area; and (b) who the solicitor is/how many solicitors specialise in that area.
- Any accreditations the firm holds which indicate a certain level of quality.

- Regulated and unregulated firms – clearly state whether the provider is regulated or unregulated and in both cases explain what it means in terms of protection for the consumer.

The CMA report mentions some examples of what information might be provided. It is not clear what is covered by “experience”. For example, this could be looking at client satisfaction and/or value for money. It is also not clear how this is going to be documented on a central hub. If this is going to be open for consumers to comment on then it will need to be monitored to ensure false comments are not posted and are removed. This leads to further difficulties as to how such information might be checked for accuracy or fairness.

Whilst we support greater access to information, legal service providers are unlikely to sign up to any kind of platform without comfort that a fair procedure for finding, vetting and displaying the information and that the hub is credible.

Further, the inclusion of pricing information should be considered with caution. As we have raised throughout our response, there is no "one size fits all" when it comes to pricing as it will depend on the specifics of the consumer's needs. Where there is a comparison of hourly rates of staff depending on seniority, different types of solicitor's firms for example (high street/regional/city/ASB) have different job titles for their staff so comparing fees will be difficult and not necessarily transparent. It will therefore be difficult to compare rates on this basis.

2. Should Legal Choices act as the central information hub for legal services in England and Wales or would an alternative website be more appropriate?

We would not agree that Legal Choices is an “established source of consumer information” as suggested by the CMA report and we would be interested to see the results of a poll asking consumers of legal services whether they had used the site in the past or ever heard of the site before.

Information hubs/comparison websites are a market in themselves, and consideration as to how the credibility of any such hubs will be maintained and communicated to consumers. In the same way that many websites publish the information provided about companies from Companies House (but as they are not the central registry, can include out of date information) it could be that alternative "hubs" come out from increased information being published about law firms. This is less of an issue where the information being published includes only facts which can be easily verified (such as contact details), but not where there is information as to satisfaction levels from real consumers involved.

CMA research has indicated that the Law Society website is used by consumers as a source of information. We would submit that any central hub should therefore be used in association with the Law Society website to ensure that it reaches the majority of consumers as ‘Legal Choices’ is clearly not the information provider commonly known to consumers. The Society’s website and the central hub would compliment each other in terms of The Law Society listing the regulated providers and then links to the central information hub displayed from provider pages.

If a new website were to be set up for the central hub, it will need to be branded appropriately. If however the Legal Choices website is used, it would need to be better publicised with an advertising campaign.

3. How should any central information hub be promoted?

Advertisement campaigns such as billboard posters across the country and social media should be prominent features of any marketing campaign. Stakeholders should also be encouraged to promote it (subject to our comment below).

- **Should front line regulators, representative bodies and self-regulatory bodies be asked to promote an information hub?**

Yes

- **Should legal services providers be obliged to link to an information hub?**

Providers will not wish to promote anything that they do not see as credible, fair and independent, and should not be compelled to in the first instance. It will take time to build up this credibility and instil confidence in the site. We think that requiring providers to link to such a hub eventually might be in the interests of consumers in theory, however it would be dangerous for this to become a requirement straight away, before the credibility and usefulness of such a hub has been tested.

4. Should Legal Choices include information on unregulated and self-regulated providers?

There is an argument that every entity providing legal services should be included on the central hub so that consumers can compare all possible providers. However, there must be a clear definition of what it means to be regulated or unregulated. On every provider's information page it should be clear whether they are regulated or not and an explanation provided of the protections this does or does not offer to the consumer. We suggest that there should be a way of limiting search criteria so that only regulated providers come up in the results if that is what the consumer is looking for.

However, the hub might have more credibility if it only included regulated providers. The issue is that unregulated providers are just that, which means that the information available may be less reliable by virtue of the fact that they are unregulated and therefore not subject to the same requirements to produce and release information as regulated providers. As such, it is possible that the inclusion of unregulated and self-regulated providers could undermine the credibility of the hub itself.

5. What materials should be developed to aid in comparing and selecting a provider?

To select a provider, a high-level search programme should be developed. This could ask whether a client needs advice for them as an individual or for their business, the type of advice they need and what their budget is. It should use

accessible wording, and could potentially filter firms by their desired outcome rather by area of law (i.e. "I'm buying a house"; "I need to defend a dispute in court"; "I'm setting up a new business").

- **Should materials be made available through channels other than a central information hub (such as Citizens Advice)?**

Yes, please see our comment above relating to accessibility of information. Citizens Advice could help with making sure that the most vulnerable get access to the information.

QUESTIONS ON IMPROVING CLIENT CARE COMMUNICATION AND INCREASING ACCESS TO REDRESS

- 1. How can client care communication be improved to better protect consumers' interests and are there any examples of client care communication that provide succinct and relevant information?**

Whilst most service providers have standard client care letters that are adapted to fit an individual client's needs (and often have "terms of business" attached), it would assist to be able to simplify this.

Although some of the required information is essential; the length of engagement letters and terms of business, which are often written in complex "legal language" with various caveats, exclusions and exemptions, raises the potential for clients to not read or understand all the points contained within the same.

It would be helpful if a central letter or document was produced for legal service providers to send out which provided for the essential points that need covering from a regulatory perspective and firms could then be left to determine what other information is required based on their client's needs and the specific circumstances of their instructions.

This would be consistent with the current practice of many large law firms, which tend to have overarching engagement letters with fee scales and then just acknowledge new instructions by way of a cover letter or brief email to clarify fees and the scope of the matter at hand. This is more effective and relevant for the client but, unfortunately, it only really applies to clients who use legal services regularly. However, if a similar approach could be found for all those using legal services, this would be beneficial to the industry as a whole.

- 2. What would be the consumer protection benefits and impact on competition of restricting the use of the title "lawyer"?**

If the title "lawyer" is restricted to regulated professionals, this provides clients with the knowledge that they can access various forms of redress in the event of issues arising. Provided there is sufficient understanding of the difference between a regulated and unregulated professional, a client will know that by engaging a "lawyer" they are engaging a suitably qualified and regulated professional to undertake their work. Given the increased blurring between the professions of solicitor, barrister and legal executive, with all three often working

in the same business having a protected title of "lawyer", in addition to the titles currently afforded to those three legal professions makes it easier for consumers. We believe that most consumers presently assume that if an individual purports to be a "lawyer", it is because they are legally qualified and consumers place a certain level of trust in that individual for that reason.

This may restrict competition as it means the title can only be used by a closed group of professionals but we consider that this is a "necessary evil" in order to provide clients with a basic level of protection. It is the client's choice if they wish to obtain legal services from unregulated professionals; however it is important that clients are made aware that they are not instructing a regulated professional.

Clients should be entitled to a basic standard of assurance and redress to the extent that lawyers fall within the bracket of "regulated professionals" and to allow unregulated professionals to use the title "lawyer" could, in our view, create considerable confusion for a client who would probably then assume they are receiving services from a regulated professional when referring to a "lawyer".

3. What are the barriers to using LeO and are there any benefits in amending its scope, jurisdiction or approach?

There are a number of barriers to using the Legal Ombudsman. These include things such as: (i) the maximum award of £150,000; (ii) the procedure involved, which includes the requirement for detailed evidence regarding the complaint; (iii) the time involved in making a claim; and (iv) the fact that only those who have instructed the relevant professional can make a complaint (ie there is currently no provision for whistleblowing).

We consider that it would be useful to extend the scope of the Legal Ombudsman by allowing complaints to come from any company or individual who believes that satisfactory legal services were not provided. Whilst this may increase the number of complaints, it is a way of ensuring that professionals remain acutely aware of the necessity to provide good legal services and ensures that legal professionals remain accountable. We consider that this will help competition and raise standards, as all providers will be subject to the same possibility of redress in the event that they do not fulfil their duties adequately.

The approach could also be softened to allow for a less time-consuming complaints "application" process. It is our view that many clients may be put off because they do not think it is worth complaining due to procedure being onerous.

4. Are the current arrangements for ADR in legal services clear and readily understandable to consumers and is there scope for greater use of ADR?

Whilst the availability of ADR is well-known to legal professionals, many legal professionals have little experience in attending or using ADR. It appears that legal service providers are good at providing information about ADR and the fact that ADR is available but we believe it is rarely used, particularly in respect of redress for clients against their legal service providers.

We believe it would be useful to increase the awareness of the benefits of ADR, even in redress against legal service providers, including the impartiality and

ability for a compromise to be agreed or decision to be made in terms of compensation and next steps without the need for going through a lengthy complains process.

5. Should legal services providers be provided with additional guidance on communicating redress options?

Although we would not want standard boiler plate wording to be added to already lengthy engagement letters, it would be extremely useful if additional guidance or template wording could be provided for legal service providers to use when communicating redress options to clients in the event of a complaint being received.

Additional guidance and suggested wording would enable providers to tailor the wording to suit their individual circumstances and enable them to suggest redress options to their clients.

6. Do any additional redress mechanisms need to be introduced for unregulated providers?

We understand that it would be difficult to impose redress mechanisms against unregulated providers as they are not subject to the same regulatory requirements. However, it is nonsensical to think that the consumers of unregulated providers who give poor service, mislead clients or give negligent advice would have no recourse against such providers other than those which would involve a significant cost to that consumer (i.e. they may have to instruct a solicitor and bring an action against the unregulated provider) rather than having a central complaints procedure. As stated above, unregulated providers should be brought under the remit of the Legal Ombudsman.

QUESTIONS ON THE REGULATORY FRAMEWORK

1. Are the high level criteria for assessing the regulatory framework that we have identified appropriate?

Under 'Impact on Competition – Supply Side' – we think there should be additional criteria of "does regulation result in reduced ability for firms to function on a day to day basis?". Increased regulation can be extremely costly (and difficult, due to lack of access to support and resources) to firms and smaller providers/sole traders who would have to substantially change their business or administrative processes in a relatively short space of time and as such may not be able to meet this.

2. Does the current regulatory framework prevent, restrict or distort competition?

We do not have enough information about how the current framework impacts the variety of providers of legal services. The paper sets out the problems that the CMA believe there are in terms of regulation but does not go as far as to say what the current effect is. However we think it is important to remember the cost and practicalities in dealing with regulation. If providers are so heavily regulated that they cannot function properly or provide services in the way that best suits

their business needs as well as their client needs then they may have to cease trading. This will ultimately lead to fewer firms especially at the high street level which will ultimately restrict competition.

Further, the level of regulation should be considered in the context of a growing number of unregulated providers. Surely it is not in the interests of consumers if regulation is so onerous that, providers (particularly smaller, local providers) cease to perform regulated activities. Access to providers performing regulated activities is extremely important, particularly in rural areas across the UK.

Overall, we consider that the imposition of regulation could distort competition.

3. Would the changes to regulation we have identified promote competition?

Again there is insufficient information to give an answer here. The CMA report sets out what the general principles for changing regulation will be but there is no information as to the actual changes and things that would be implemented. However we would refer back to our previous answer. The profession is already very heavily regulated and any further regulation will need to consider how this will affect smaller providers in the market. Further regulation could ultimately potentially lead to reduced competition. Furthermore smaller firms and new legal services providers will have to increase their costs in order to meet the regulation costs and this will also reduce competition.

4. Is further review of the regulatory framework justified on the basis of competition concerns?

We think that a further review is justified, particularly in light of separate proposals (which are referred to in the report) on the independence of regulators. We also think that finding out more about the level of competition between regulated and unregulated firms is essential in deciding what kind of framework should apply and to which types of providers. However, we consider that the review should not be undertaken with the intention from the outset being greater regulatory involvement.
